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COPY MAILED
DEC 18 2008

In re Application of :
Fogg et al. : DECISION ON APPLICATION
Application No. 10/826,047 : FOR
Filed: April 16, 2004 : PATENT TERM ADJUSTMENT
Atty. Dkt. No. GEN10 P-459 :

This is a decision on the "REQUEST FOR RECONSIDERATION OF THE PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.703(a)(6)," filed on June 20, 2008. Applicants request that the initial determination of patent term adjustment be corrected by seventy-one (71) days from one hundred twenty-seven (127) days to one hundred ninety-eight (198) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) at the time of mailing of the Notice of Allowance is ONE HUNDRED NINETY-EIGHT (198) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 22, 2008, the Office mailed a Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date was 127 days (239 days of Office delay reduced by 112 days of applicant delay). The instant application for patent term adjustment was timely filed.¹

Applicants assert that a reduction in patent term adjustment of 71 days for the filing of the amendment after a non-final Office action on May 15, 2007, three (3) months and 71 days after the

¹ PALM Records indicate that the issue fee was paid on June 30, 2008.

mailing of a non-final Office action on December 5, 2006, is incorrect, because a new non-final Office action, which reset the period for reply, was mailed on February 15, 2007


Applicants' argument is well taken. The Office action mailed on February 15, 2007, set a new time period for reply. As the reply filed on May 15, 2007, was filed within three (3) months of the mailing date of the Office action mailed on February 15, 2007, no reduction in patent term adjustment for the filing of the response filed on May 15, 2007, is warranted.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the notice of allowance is ONE HUNDRED NINETY-EIGHT (198) days (231 days of PTO delay, reduced by 41 days of Applicant delay).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The Office of Data Management has been advised of this decision. The application is thereby forwarded to the Office of Data Management for issuance of the patent. The patent term adjustment indicated on the patent (as shown on the Issue Notification mailed about three weeks prior to patent issuance) will include any additional adjustment accrued both for Office delay in issuing the patent more than four months after payment of the issue fee and satisfaction of all outstanding requirements, and if applicable, for the Office taking in excess of three years to issue the patent (to the extent that the three-year period does not overlap with periods already accorded).

Telephone inquiries regarding this matter should be directed to Senior Petitions Attorney Douglas I. Wood at (571) 272-3231.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Encl: Revised PALM Calculation

Day : Tuesday
Date: 12/16/2008

PALM INTRANET

Time: 20:01:22

PTA Calculations for Application: 10/826047

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|--------------------------|------------|-------------------------|-----|
| Application Filing Date: | 04/16/2004 | PTO Delay (PTO): | 239 |
| Issue Date of Patent: | | Three Years: | 0 |
| Pre-Issue Petitions: | 0 | Applicant Delay (APPL): | 112 |
| Post-Issue Petitions: | 0 | Total PTA (days): | 198 |
| PTO Delay Adjustment: | 71 | | |

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| 29 | 03/02/2006 | RESPONSE TO ELECTION / RESTRICTION FILED | | | |
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| 27 | 02/06/2006 | REQUIREMENT FOR RESTRICTION / ELECTION | | | |
| 26 | 10/31/2005 | MISCELLANEOUS INCOMING LETTER | | | |
| 25 | 02/08/2005 | REFERENCE CAPTURE ON IDS | | | |
| 24.7 | 02/08/2005 | INFORMATION DISCLOSURE STATEMENT (IDS) FILED | | | |
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| 20 | 09/21/2004 | CASE DOCKETED TO EXAMINER IN GAU | | | |
| 19 | 09/20/2004 | TRANSFER INQUIRY TO GAU | | | |
| 18 | 09/06/2004 | TRANSFER INQUIRY TO GAU | | | |
| 17 | 08/26/2004 | IFW TSS PROCESSING BY TECH CENTER COMPLETE | | | |
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| 7 | 06/25/2004 | APPLICATION DISPATCHED FROM OIPE | | | |
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| 5 | 05/20/2004 | CLEARED BY L&R (LARS) | | | |
| 4 | 05/18/2004 | REFERRED TO LEVEL 2 (LARS) BY OIPE CSR | | | |
| 3 | 05/18/2004 | CASE CLASSIFIED BY OIPE | | | |
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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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